

Application No. 09/849168 (Docket: DT.0101)
37 CFR 1.111 Amendment dated 09/09/2005
Reply to Office Action of 06/21/2005

AMENDMENTS TO THE DRAWINGS

The attached replacement sheets of drawings includes changes to Figures 1-38. These sheets, which includes Figures 1-38, replaces the original sheets including Figures 1-38. Figures 1-38 have been redrawn by a competent draftsperson as advised.

Attachment: Replacement Sheets

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REMARKS/ARGUMENTS

In the Office Action, the Examiner noted that claims 1-39 are pending in the application. The Examiner additionally stated that claims 1-39 are rejected. By this amendment, claims 2, 7, 11-12, and 22-39 have been cancelled and claims 1, 3, 5, 8-10, 13-17, and 19 have been amended. Hence, claims 1, 3-6, 8-10, and 13-21 are pending in the application.

Applicant hereby requests further examination and reconsideration of the application, in view of the foregoing amendments.

Information Disclosure Statement

The Examiner noted that the information disclosure statement filed September 2, 2003 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a document (U.S. Patent 6,025,686 - Fernandez et al - 5/18/2000) does not exist. The Examiner suggested that perhaps the applicant intended U.S. Patent 6,052,686 - Fernandez et al - 4/18/2000. The Examiner stated that the reference to U.S. Patent 6,025,686 has been placed in the application file, but the information referred to therein has not been considered as to the merits and Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e).

Applicant responds that indeed the citation should have been U.S. Patent 6052686. The '686 reference was submitted in the Information Disclosure Statement signed off by the Examiner on 05/20/2005. There is no need to retain the reference to U.S. Patent 6025686 in that a typographical mistake resulted in its submission in the 09/02/2003 submittal.

In the Drawings

The Examiner required new corrected drawing (Figures 6-38) in compliance with 37 CFR 1.121(d). In response, Applicant submits herewith replacement drawing sheets for Figures 1-38. Accordingly, it is requested that the objections to the drawings be withdrawn.

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In the Specification

The Examiner objected to abstract for the disclosure is objected to because it is more than 150 words and required appropriate correction. By this response, Applicant has amended the abstract so that it is less than 150 words.

The Examiner also objected to the disclosure because of the following informality: the application "Apparatus For Merchandise Promotion Optimization" has serial number 091849,621 and this serial number is missing in the specification on page 1 (line 17). By this response, paragraph [0002] of the specification has been amended to provide the required serial number.

The Examiner also objected to the specification because the use of the trademarks (page 20, ¶61, lines 11 and 14; page 22, ¶62, lines 15 and 17; page 27, ¶71, lines 26 and 29; page 29, ¶73, line 6; page 63, ¶129, line 6) has been noted in this application. The Examiner stated that they should be capitalized wherever they appear and be accompanied by the generic terminology. The Examiner further noted that although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks. Appropriate correction was required. By this response, the above-noted paragraphs have been amended to correct the stated deficiencies.

In view of the above-noted amendments, it is respectfully requested that the objections to the specification be withdrawn.

In the Claims

Rejections Under 35 U.S.C. §112

The Examiner rejected claims 10, 30, and 39 under 35 U.S.C. 112, second paragraph, because the claims' identifications/descriptions are indefinite. The Examiner noted that Claims 10, 30, and 39 contain the trademark/trade name JAVA™. It was asserted that where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph and that the claim scope is uncertain since the trademark or

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trade name cannot be used properly to identify any particular material or product. The Examiner further wrote that a trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. The Examiner moreover stated that in the present case, the trademark/trade name is used to identify/describe an "applet" and, accordingly, the identification/description is indefinite. The Examiner suggested that, to overcome these rejections, the claims be amended to remove the trademark (JAVA™) and leave the appropriate generic name (applets).

By this paper, claims 30 and 39 have been cancelled, rendering the above rejections moot. Claim 10 has been amended as suggested by the Examiner and Applicant therefore requests that the rejection of claim 10 be withdrawn.

Allowable Subject Matter

The Examiner objected to claims 12-18 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant appreciates the Examiner's consideration and indications of allowability of these claims. By this amendment, the allowable limitations of claim 12 along with the limitations of intervening claims 11, 7, and 2 have been incorporated into the language of claim 1. Claims 2, 7, 11, and 12 have been cancelled and those claims depending from claims 2, 7, 11, and 12 have been amended to now depend from claim 1, as appropriate.

Double Patenting Rejections

The Examiner issued rejections of claims 1-11 and 19-39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims drawn from U.S. Patent 6,553,352, Delurgio et al. By this paper, Applicant has amended claim 1 to incorporate allowable subject matter from claim 12 and intervening claims 2, 7, and 11. Claims 22-39 have been cancelled thereby rendering the rejections moot. Accordingly, it is respectfully requested that the rejections of claims 1-11 and 19-21 be withdrawn.

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Rejections Under 35 U.S.C. §103(a)

The Examiner rejected claims 1-11 and 22-30 under 35 U.S.C. 103(a) as being unpatentable over Ouimet (U.S. Patent 6,094,641) in view of Morgan (U.S. Patent 5,799,286). The Examiner further rejected claims 19-21, 31-32 and 34-39 under 35 U.S.C. 103(a) as being unpatentable over Ouimet in view of Morgan and further in view of Tellis (1995). Applicant respectfully traverses the Examiner's rejections, noting that by this paper, claims 2, 7, 11, and 22-39 have been cancelled, thus rendering the above-noted rejections moot, claim 1 has been amended to incorporate allowable subject matter, and claim 19 has been amended to depend from claim 1. For these reasons, Applicant respectfully requests that the Examiner withdraw the rejections of claims 1, 3-6, 8-11, and 19-21.

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CONCLUSIONS

In view of the arguments advanced above, Applicant respectfully submits that claims 1, 3-6, 8-10, and 13-21 are in condition for allowance. Reconsideration of the rejections is requested, and allowance of the claims is solicited.

Applicant earnestly requests that the Examiner contact the undersigned practitioner by telephone if the Examiner has any questions or suggestions concerning this amendment, the application, or allowance of any claims thereof.

I hereby certify under 37 CFR 1.8 that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date of signature shown below.

Respectfully submitted,
HUFFMAN PATENT GROUP, LLC

/ Richard K. Huffman/

By: _____

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09/09/2005

Date: _____

Attachments